

Exhibit 5

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 14 Civ 7510 (JSR)

5 -----x
6 NATIONAL RAILROAD PASSENGER CORPORATION,

7 Plaintiff,

8 - against -
9

10 ARCH SPECIALTY INSURANCE COMPANY,
11 ET AL.,

12 Defendants.
13 -----x

14 February 5, 2015
15 9:34 a.m.

16 Videotaped Deposition of NASRI
17 MUNFAH, taken by Defendants, pursuant to
18 Notice, held at the offices of Ropes &
19 Gray LLP, 1211 Avenue of the Americas, New
20 York, New York, before Todd DeSimone, a
21 Registered Professional Reporter and
22 Notary Public of the State of New York.
23
24
25

<p style="text-align: right;">Page 314</p> <p>1 N. MUNFAH</p> <p>2 Going back to answer your</p> <p>3 question is the estimated cost that we</p> <p>4 carry in the estimate is a percentage.</p> <p>5 The actual cost will be based on the scope</p> <p>6 of work, on the level of the design</p> <p>7 completion, the components that are</p> <p>8 included and are not included in the scope</p> <p>9 of work, and negotiated with Amtrak.</p> <p>10 And usually Amtrak contracts on</p> <p>11 cost plus fixed fee. So whatever the cost</p> <p>12 Amtrak pays with a fixed fee, that is</p> <p>13 negotiated.</p> <p>14 Q. And what is Amtrak's general</p> <p>15 fixed fee?</p> <p>16 A. Generally it is -- again, it is</p> <p>17 negotiated based on project -- from</p> <p>18 project to project based on the complexity</p> <p>19 of the project, based on the size of the</p> <p>20 project, based on the risk, and it is</p> <p>21 usually around 8 to 10 percent of the</p> <p>22 cost, of the engineering cost.</p> <p>23 Q. So if that's correct, does that</p> <p>24 mean that HNTB's bid for the 30 percent</p> <p>25 design will be approximately \$20 million?</p>	<p style="text-align: right;">Page 316</p> <p>1 N. MUNFAH</p> <p>2 A. Correct, and the numbers that</p> <p>3 you are mentioning are higher than what I</p> <p>4 think the number will be when we do our</p> <p>5 engineering estimate.</p> <p>6 Q. And what do you think the</p> <p>7 number will be when you do your</p> <p>8 engineering estimate?</p> <p>9 MR. HEALY: Objection to form.</p> <p>10 Calls for speculation.</p> <p>11 A. I don't know yet. We have not</p> <p>12 done it.</p> <p>13 We have to go over the scope,</p> <p>14 identify each scope element, each</p> <p>15 deliverable, each hours needed, and we</p> <p>16 will work out the hours, and then based on</p> <p>17 the hours, based on the rates of the</p> <p>18 various individuals who are going to be</p> <p>19 working on it, add to that the overhead,</p> <p>20 the company's overhead, and then we add on</p> <p>21 top of that the fixed fee and then we add</p> <p>22 the expenses, direct costs associated with</p> <p>23 that.</p> <p>24 We add to that also the</p> <p>25 subconsultants' cost, things such as</p>
<p style="text-align: right;">Page 315</p> <p>1 N. MUNFAH</p> <p>2 MR. HEALY: Objection to form.</p> <p>3 A. I would like to clarify that.</p> <p>4 As I said before, there is no</p> <p>5 bid, because we put proposal and it is a</p> <p>6 best value procurement, and it is -- the</p> <p>7 scope is developed in conjunction with the</p> <p>8 owner, in this case it will be Amtrak, and</p> <p>9 the fee is negotiated, and the fee is</p> <p>10 based on cost, engineering cost, plus a</p> <p>11 fixed fee as a percentage of the</p> <p>12 engineering cost.</p> <p>13 Q. Has HNTB prepared this proposal</p> <p>14 yet for this 30 percent design?</p> <p>15 MR. HEALY: Objection to form.</p> <p>16 A. HNTB did not prepare the</p> <p>17 proposal yet. It is in the preparation at</p> <p>18 this stage. The proposal is due March 3rd</p> <p>19 or March -- first week of March, I</p> <p>20 believe.</p> <p>21 Q. And now that I've finally</p> <p>22 understood, is it correct that in terms of</p> <p>23 what HNTB will be proposing is its</p> <p>24 out-of-pocket engineering costs plus some</p> <p>25 percentage fee on top of that?</p>	<p style="text-align: right;">Page 317</p> <p>1 N. MUNFAH</p> <p>2 survey, such as, I don't know, other, if</p> <p>3 there is any additional testing that need</p> <p>4 to be done or things of that nature to</p> <p>5 develop the design.</p> <p>6 Q. When you are all in for this 30</p> <p>7 percent design, do you expect that HNTB's</p> <p>8 proposal will be less than \$10 million?</p> <p>9 MR. HEALY: Objection to form.</p> <p>10 Asked and answered. Calls for</p> <p>11 speculation.</p> <p>12 A. I thought I answered that</p> <p>13 question, but I don't know if you want me</p> <p>14 to speculate what would the number be.</p> <p>15 Q. Are you one of the people</p> <p>16 that's involved in preparing this</p> <p>17 proposal?</p> <p>18 A. Yes.</p> <p>19 Q. Who else besides you is</p> <p>20 involved in preparing the proposal?</p> <p>21 A. A variety of staff, from the</p> <p>22 structural as well as mechanical,</p> <p>23 electrical, transit, rail.</p> <p>24 By the way, those numbers can</p> <p>25 become available in --</p>

<p style="text-align: right;">Page 318</p> <p>1 N. MUNFAH</p> <p>2 Q. A couple of weeks?</p> <p>3 A. Yeah, a few weeks.</p> <p>4 MR. FINAZZO: That's why I'm</p> <p>5 going to ask Mr. Healy right now to give</p> <p>6 it to us.</p> <p>7 I have no further questions for</p> <p>8 the witness. I'm going to stay on the</p> <p>9 record -- do you have questions? Does</p> <p>10 anybody else have questions?</p> <p>11 MR. CHURCH: I just want to say</p> <p>12 we don't have the SpaceTech data that</p> <p>13 Mr. Munfah referenced concerning scans of</p> <p>14 the tunnels outside of the inundation</p> <p>15 area.</p> <p>16 MR. FINAZZO: So let's address</p> <p>17 that, Mr. Healy, and I want to address a</p> <p>18 couple of other things with you.</p> <p>19 We still don't have from you an</p> <p>20 identification by Bates numbers of the</p> <p>21 documents that were received from HNTB to</p> <p>22 Amtrak by subpoena. I know you are</p> <p>23 probably not the head of the team that's</p> <p>24 making that decision. We have Mr. Thomas</p> <p>25 on Monday's deposition. We are going to</p>	<p style="text-align: right;">Page 320</p> <p>1 N. MUNFAH</p> <p>2 today as Munfah Exhibit -- or part of</p> <p>3 Munfah Exhibit 1. We want all the</p> <p>4 documents that relate to those drafts.</p> <p>5 I know it is Amtrak's position</p> <p>6 that those drafts are protected under the</p> <p>7 Federal Rules. I do not think that is</p> <p>8 correct. And it surely is not the</p> <p>9 defendants' position.</p> <p>10 This report was prepared prior</p> <p>11 to the litigation. It is dated the date</p> <p>12 after Amtrak filed the lawsuit. Amtrak</p> <p>13 then published the report on the Internet.</p> <p>14 The report is not a report prepared as an</p> <p>15 expert's report under Rule 26 of the</p> <p>16 Federal Rules.</p> <p>17 The fact that Amtrak has</p> <p>18 incorporated that into a Rule 26</p> <p>19 disclosure because it didn't want to do</p> <p>20 another report does not, in my opinion,</p> <p>21 address the issue of whether the drafts of</p> <p>22 that report are protected or not.</p> <p>23 Three, we have Mr. Munfah's</p> <p>24 testimony here today about this proposal</p> <p>25 that is being made for the design of the</p>
<p style="text-align: right;">Page 319</p> <p>1 N. MUNFAH</p> <p>2 ask your team to make some time on Tuesday</p> <p>3 if we could to call the Court about that.</p> <p>4 Secondly --</p> <p>5 MR. HEALY: You have them all</p> <p>6 by custodian and you can sort them all by</p> <p>7 custodian.</p> <p>8 MR. FINAZZO: Look, we have a</p> <p>9 subpoena, and I want to know for certain</p> <p>10 what documents came from HNTB. I think we</p> <p>11 are entitled to that. I have written you</p> <p>12 letters. I have written you e-mails.</p> <p>13 MR. HEALY: I'm not into</p> <p>14 production. You guys have asked for a</p> <p>15 million things at every deposition. We</p> <p>16 have made production after production.</p> <p>17 MR. FINAZZO: I'm at the end of</p> <p>18 my rope.</p> <p>19 So by Tuesday what I would like</p> <p>20 to happen is either identify the documents</p> <p>21 you received from HNTB pursuant to the</p> <p>22 subpoena by Bates number or we will talk</p> <p>23 to the Judge about it.</p> <p>24 Two, we want all of the drafts</p> <p>25 of the HNTB report that has been marked</p>	<p style="text-align: right;">Page 321</p> <p>1 N. MUNFAH</p> <p>2 remedial work or some percentage of the</p> <p>3 design of the remedial work, and we have</p> <p>4 costs for design in this insurance claim</p> <p>5 that either approximate or exceed \$70</p> <p>6 million. We ask that when that proposal</p> <p>7 is complete, that a copy of it be</p> <p>8 immediately provided to the defendants.</p> <p>9 We obviously can't deal with</p> <p>10 that with the Judge on Tuesday, but I also</p> <p>11 want to take up this issue of draft</p> <p>12 reports of the HNTB report with the Judge</p> <p>13 on Tuesday, unless Amtrak is going to</p> <p>14 agree to produce them and tell us when it</p> <p>15 is producible.</p> <p>16 That said, I don't have</p> <p>17 anything further today.</p> <p>18 MR. HEALY: You said a lot.</p> <p>19 Safe to say, I don't agree with it. But</p> <p>20 we don't need to fight about it right now.</p> <p>21 MR. FINAZZO: Thank you. We</p> <p>22 are off the record.</p> <p>23 (Continued on the following</p> <p>24 page to allow for signature line</p> <p>25 and jurat.)</p>